No. 15153

United States
Court of Appeals
for the Ninth Circuit

CALIFORNIA TRUST COMPANY and HUNT STROMBERG, Executors of the Estate of KATHERINE STROMBERG, Deceased,

Appellants.

vs.

ROBERT A. RIDDELL, Director of Internal Revenue and Formerly Collector of Internal Revenue for the Sixth District of California,

Appellee.

Supplemental
Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—7-27-56

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No. 16,183-HW

CALIFORNIA TRUST COMPANY and HUNT STROMBERG, Executors of the Estate of KATHERINE STROMBERG, Deceased,

Plaintiffs,

vs.

ROBERT A. RIDDELL, Director of Internal Revenue and Formerly Collector of Internal Revenue for the Sixth District of California,

Defendant.

SUPPLEMENTAL MEMORANDUM RE MARITAL DEDUCTION

This case was submitted to the Court upon a written stipulation of facts, from which stipulation the Court was of the opinion that only two questions were before it for decision:

1. Were the insurance policies in controversy community property; and

2. Were plaintiffs entitled to a marital deduction as to such community property? [83*]

In the opinion filed in this case on December 1, 1955, the Court held the insurance polices in ques-

*Page numbering appearing at foot of page of original Certified Transcript of Record.

tion were community property but the marital deduction statute did not apply to community property. The opinion also stated that if it should appear there was separate property in the estate of Katherine Stromberg, deceased, then the estate would possibly be entitled to a marital deduction.

The case was reopened after filing of the opinion of December 1st, for the purpose of allowing plaintiffs to present additional evidence, which evidence now indicates that the estate consisted not only of community property but also of separate property of decedent.

It is agreed by the parties hereto that the marital deduction provision of the 1948 Internal Revenue Act was inserted for the purpose of equalizing tax burdens between community and non-community property states. To hold that a marital deduction does not apply to community property does not necessarily mean that one is not entitled to a marital deduction if there is separate as well as community property in the estate. To say that a marital deduction applies only if the estate consisted of separate property and does not apply if the estate consisted of both community and separate property would certainly be contrary to the intent of Congress. Consequently, we are of the opinion that a marital deduction is applicable in an estate in which there is separate property, even though that estate might also contain community property.

The Last Will and Testament of decedent, Katherine Stromberg, contained the following provision: [84]

> "I give, devise and bequeath my entire estate * * * unto my husband, Hunt Stromberg. Should he predecease me or fail to survive distribution of my estate, I give, devise and bequeath my entire estate to my son, Hunt Stromberg, Jr."

The estate was distributed within the statutory period. The Decree of Distribution distributed the entire estate to Hunt Stromberg, husband of decedent, and no mention was made therein as to that provision of the Will which recited that the property should go to Hunt Stromberg, Jr., the son, in the event the husband failed to survive distribution.

In the hearing at bar plaintiffs objected to introduction into evidence of a certified copy of the Last Will and Testament of decedent, upon the theory that the Decree of Distribution controlled in California and not the Will's provisions and even though the Will provided the husband was not to succeed to the estate if he did not survive its distribution that was of no moment, because distribution was actually made to the husband. Plaintiffs cite to the Court many authorities to the effect that the controlling factor in California is the Decree of Distribution of the Probate Court.

We find no fault with the position taken by plaintiffs nor with the decisions of the California courts, but this action arises under the Federal taxing statutes. As heretofore pointed out, the marital deduction provision was inserted in the

Revenue Act of 1948 for the purpose of equalizing taxes between residents of community and non-community property states. In other words, it was the intent [85] of Congress that there should be a uniform rule applicable in all states. The question of uniformity of the taxing authority has been passed upon often by the Supreme Court, and it has held on many occasions that the Federal Acts applied and not the laws of the local jurisdiction.

In Burnet, etc., vs. Harmel, 287 U. S. 103, in passing upon the question of payment of oil and gas lease bonuses under Texas law, the Supreme Court said, at page 110:

> "Here we are concerned only with the meaning and application of a statute enacted by Congress, in the exercise of its plenary power under the Constitution, to tax income. The exertion of that power is not subject to state control. It is the will of Congress which controls, and the expression of its will in legislation, in the absence of language evidencing a different purpose, is to be interpreted so as to give a uniform application to a nationwide scheme of taxation."

Again, in Lyeth vs. Hoey, 305, U. S. 188, at 193, the Supreme Court said:

> "In the instant case, the Court of Appeals applied the Massachusetts rule, holding that whether the property was received by way of inheritance depended 'upon the law of the juris-

> diction under which this taxpayer received it.' We think this ruling was erroneous. The question as to the construction of the exemption in the federal statute is not determined by local law." [86]

In Morgan vs. Commissioner, 309 U. S. 78, the Supreme Court, at page 80, said:

> "State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed."

In Estate of Rogers vs. Commissioner, 320 U. S. 410, at page 414, again speaking upon this most important question, the Supreme Court said:

> "Whether by a testamentary exercise of a general power of appointment property passed under § 302(f) is a question of federal law, once state law has made clear, as it has here, that the appointment had legal validity and brought into being new interests in property * * * Were it not so, federal tax legislation would be the victim of conflicting state decisions on matters relating to local concerns and quite unrelated to the single uniform purpose of federal taxation."

From the foregoing, we are of the opinion that the Federal Government is not restricted to the rule as established in California relative to the Decree of Distribution but, in determining tax liability, may refer to the provisions of the Will. The problem is, then, whether under the langauage

of the Will plaintiff is entitled to a marital deduction as to separate property of the estate.

As pointed out in our prior opinion, there is only one case decided by the Circuit Court which has any [87] bearing on this matter—Kasper vs. Kellar, 217 F.2d 744. In that case the Will provided that distribution was to be made to the devisees "if living at the time of distribution of my estate." The evidence showed that the administration of the estate had been consummated and distribution of its assets made within six months after decedent's death, and that the widow was living at the time. The district court took the view that the occurring of the events and the removal of the contingencies within the period of six months after decedent's death were sufficient under the statute to establish the right to the marital deduction. However, the Circuit Court disagreed and said, at page 746, [quoting the Commissioner's letter to the estate]:

> "'The fact that distribution actually took place within the six months' period is immaterial since subsection (D) applies only if on the date of the decedent's death it is certain that the surviving spouse's interests will become absolute if she survives such six-months' period. As of the date of the decedent's death there was no certainty that within the six-months' period the spouse's interests would become absolute inasmuch as it was possible that distribution might not have been made within six months of death.'

> "There can be no question as to the right of Congress to make any contingency, legal or testamentary, to which the transmitting of a decedent's property is subject, the basis of a difference in estate-tax liability. Such a contingency, therefore, can as properly [88] be made to consist of an existing legal possibility as of an existing fact condition. Whatever the selected contingency may be, it necessarily may be made admeasurable for tax purposes as of the time of the decedent's death. (Citing cases.) And when the contingency is so admeasurable and then exists, whether it has been made one of legal possibility or of fact certainty, it will not alter the situation that the contingency has thereafter ceased to exist, even though this occurs before the estate tax itself is payable."

From the above it can be ascertained that the Circuit Court (Eighth Circuit) sustains the Commissioner in holding that if the Will contains a provision to the effect that the devisee must be alive at the time of distribution of the estate, the estate is not entitled to a marital deduction.

We agree with the decision of the Commissioner in the estate at bar and hold that under the facts of this case plaintiffs are not entitled to the marital deduction as claimed.

Findings of fact, conclusions of law and judgment are to be prepared for presentation to the

Court for signature on or before December 28, 1955.

Dated this 14th day of December, 1955.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed December 14, 1955. [89]

[Endorsed]: No. 15153. United States Court of Appeals for the Ninth Circuit. California Trust Company and Hunt Stromberg, Executors of the Estate of Katherine Stromberg, Deceased, Appellants, vs. Robert A. Riddell, Director of Internal Revenue and Formerly Collector of Internal Revenue for the Sixth District of California, Appellee. Supplemental Transcript of Record. Appeal From the United States District Court for the Southern District of California, Central Division.

Filed: June 4, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.